IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 480 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
SULOCHANABEN RAMESHCHANDRA SHAH M/O LATE DARSHAN R & 1 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR MEHUL S SHAH for SURESH M SHAH for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 17/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the Award dated 5th July, 2002 made in Motor Accidents Claim Petition No. 307/98 by the Motor Accidents Claims Tribunal (Main), Kachchh at Bhuj, this appeal has been filed by the insurance company.

2. By virtue of the impugned award, a sum of Rs. 21,64,500/- with running interest at the rate of 12% p.a. from the date of the petition till the date of the deposit of the said amount has been awarded to respondent No. 1-original claimant.

3. The respondents herein, who are original claimants, had claimed Rs. 25,78,868/- alongwith interest thereon @ 18% p.a. by filing an application under sec. 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

4. Looking to the course which we propose to adopt for deciding this appeal, we do not go into the facts with regard to the accident, which had taken place on 19th November, 1997, wherein son of the original claimants, namely, Darshan, had lost his life.

5. The main submission which has been made by learned advocate Shri Vibhuti Nanavati appearing for the appellant-insurance company is that the application was filed before the Motor Accidents Claims Tribunal under the provisions of sec. 163A of

the Act. In view of the said fact, looking to the provisions of law and looking to the law laid down by the Hon'ble Supreme Court in the case of **Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Ltd**., (2004)5 SCC 385, the Tribunal could not have awarded the aforesaid compensation.

6. It has been submitted by him that when the application had been filed by the claimants before the Tribunal under the provisions of sec. 163A of the Act, the Tribunal could not have awarded compensation as if annual income of the deceased was more than Rs. 40,000/-. In the instant case, the Tribunal had come to the conclusion that the deceased was earning Rs. 1,80,000/- per annum, and looking to his age and other relevant factors, the Tribunal awarded compensation of Rs. 21,64,500/- with running interest of 12% p.a.

7. According to him, on the plain reading of section 163A of the Act, it is very clear that the said section provides for special provisions with regard to payment of compensation on a structured formula basis. The legislative intent behind the enactment of the said section was to provide for making of an award consisting of a predetermined sum, without insisting on a long-drawn out trial or without proof of negligence in causing the accident. The said section is subject to the Second Schedule appended thereto and it provides for the grant of immediate relief to a section of people whose annual

income is not more than Rs. 40,000/-. In the aforesaid circumstances, it has been submitted by the learned advocate appearing for the appellant that the award made is beyond the scope of the aforesaid section and, therefore, the award should be quashed and set aside.

8. On the other hand, learned advocate Shri Mehul S. Shah appearing for the original claimants-respondents has tried to support the award of the Tribunal. However, he has fairly submitted that if this court is inclined to follow the principle laid down by the Hon'ble Supreme Court in the case of **Deepal Girish Soni** (supra), the case be remanded to the Tribunal for fresh adjudication.

9. Upon hearing the learned advocates and looking to the provisions of section 163A of the Act and the judgment delivered by the Hon'ble Supreme Court in the case of **Deepal Soni** (supra), we are of the view that the Tribunal could not have awarded the aforesaid amount by way of compensation when the application was submitted under the provisions of sec. 163A of the Act.

10. It is well-settled that for the purpose of interpretation of a statute, the same is to be read in its entirety. The scheme envisaged under sec. 163A leaves no manner of doubt that by reason thereof, the rights and obligations of the parties are to be determined finally. By reason of section

163A, the compensation is required to be determined by applying the multiplier method, as provided in the Second Schedule. Apart from that, factors like reduction of one-third of the amount in consideration of the expenses, which the victim would have incurred towards his maintenance, general damages in case of death, as also in the case of injuries/disabilities, disability in non-fatal accidents, etc. are required to be considered, which indicate that the amount of compensation so awarded under this section is final and not an interim one.

11. In the instant case, the Tribunal has not awarded compensation strictly as per the provisions of sec. 163A of the Act as income of the deceased was taken at Rs. 1,80,000/-. On the basis of the said income the compensation has been awarded. Though a person can claim more compensation while making an application under sec. 163A of the Act, the Tribunal cannot award compensation beyond what is contemplated and prescribed in the Second Schedule. In the instant case, evidently the Tribunal has assessed the annual income of the deceased beyond Rs. 40,000/-. In our opinion, the Tribunal has committed an error by awarding compensation on higher side than what is prescribed under the provisions of sec. 163A of the Act read with the Second Schedule.

12. Looking to the aforesaid facts and in view of the legal provisions, in our opinion, the award of the Tribunal is contrary to law and therefore is

liable to be quashed and set aside. The matter, therefore, requires to be adjudicated afresh.

13. In the result, the appeal is partly allowed. The impugned award dated 5th July, 2000 made in MACP No. 307/98 made by the MACT (Main), Kachchh at Bhuj, is quashed and set aide. The matter is remanded to the Tribunal for its adjudication afresh. It may be noted here that this Court has passed the aforesaid order in view of the fact that the Tribunal has to follow the procedure established by law. Looking to the facts of the case, the amount invested in Fixed Deposit, as directed by the Tribunal, shall be continued in fixed deposit and the claimants shall be entitled to periodical interest on the said deposit only up to the date of this judgment and order. It is clarified that interest accruing on the fixed deposit shall be accumulated and would be adjusted at the time of final award. If any amount has already been paid to the respondents-claimants, the said amount shall be adjusted at the time of making the final award.

Needless to say that the parties concerned shall be at liberty to adduce further evidence if they so desire.

14. As the accident had taken place in the year 2000, it will be open to the concerned parties to file an application for expeditious hearing of the

matter before the Tribunal, and if such an application is made, we are sure that the Tribunal shall pass an appropriate order thereon so that the matter can be finally decided at an early date. It is clarified that this Court has not entered into merits of the matter and, therefore, the Tribunal shall consider the matter afresh in the light of the evidence which might be adduced and the submissions which may be made before it, without being influenced by the fact that the impugned award has been quashed and set aside by this court.

No order as to costs.

(Anil R. Dave, J.)

(H.B. Antani, J.)

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